



Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 792

Case No. 877: RIVOLA

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President,
presiding; Mr. Mayer Gabay; Ms. Deborah Taylor Ashford;

Whereas at the request of Gisele Rivola, a former staff
member of the United Nations, the President of the Tribunal, with
the agreement of the Respondent, extended to 30 June 1995, the time-
limit for the filing of an application to the Tribunal;

Whereas, on 27 June 1995, the Applicant filed an application
that did not fulfil all the formal requirements of article 7 of the
Rules of the Tribunal;

Whereas, on 11 October 1995, the Applicant, after making the
necessary corrections, again filed an application requesting the
Tribunal, inter alia:

"... to order:

B. The cancellation of the memorandum dated 22 March 1991
of the Chief of Personnel (...) establishing the grade of my
post at the G-4 level.

C. The administrative implementation following from the
memorandum of the Chief of Personnel of 8 December 1989 (...) informing me of the 'results of the job classification' and annexing the new job description of the G-5 post.

Retroactive implementation of that classification to 1 January 1995, in accordance with the circular/memorandum of the Executive Secretary dated 20 March 1990 (...)

D. The payment of compensation in the amount of US\$ 238,000 to cover the loss of salary, pension rights and the moral injury suffered."

Whereas the Respondent filed his answer on 9 August 1996;

Whereas, on 1 November 1996, the Tribunal requested the Respondent to provide it with answers to certain questions, which he did, on 5 November 1996;

Whereas, on 11 November 1996, the Applicant provided her comments thereon;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Organization on 24 June 1980, as a Clerk in the International Trade Center (ITC), UNCTAD/GATT, at the G-2 level, on a short-term appointment. She served on short-term appointments until 5 September 1983, when she was granted a one-year fixed-term appointment as a Clerk-Typist, at the G-3, step VI level, in the ITC, Office for Africa Division, Division of Technical Cooperation (DTC). On 7 May 1984, her functional title was changed to that of Secretary, and on 5 September 1984, her fixed-term appointment was extended through 30 September 1986. On 1 January 1986, the Applicant was promoted to the G-4 level. The Applicant's fixed-term appointment was extended for three years, until 30 September 1989. It was then further extended for five years, until 30 September 1994, and subsequently through 31 January 1996.

On 7 October 1988, ITC/CIR/121 was sent to all General Service staff members. The Circular noted that, in view of the change in content of many General Service posts as a result of the introduction of new technology, and organizational changes and diversification within ITC, a post classification study was being

initiated. Pursuant to this Circular, a Classification Committee, composed of three members, was to finalize the job description for each post and then analyze and classify the post. The proposed grade of each post would then be submitted to the Chief, Personnel Administration Section (PAS), who would inform the incumbent of the post of the classification. A proceeding for reclassification was also established in cases where the incumbent disagreed with the classification of the post.

In 1987 and 1988, the Chief of the Office for Africa sent several memoranda to the Director of DTC and to the Deputy Executive Director of ITC, asking them to upgrade the Applicant's post and to promote her on the basis of the functions that she was performing.

In a memorandum dated 8 December 1989, the Chief, PAS, informed the Applicant that, following the Job Classification Exercise of General Service posts, the Joint Post Classification Committee had classified the post she encumbered at the G-5 level.

In a circular memorandum dated 20 March 1990, the Executive Director, ITC, informed all General Service staff at Headquarters of the status of the classification exercise initiated pursuant to ITC/CIR/121 of 7 October 1988.

On 22 March 1991, the Chief, PAS, informed the Applicant that, following a comprehensive classification of General Service posts in ITC, the Executive Director had determined that the grade of the post she encumbered was in fact G-4, which corresponded to her individual grading. Attached to the communication was a job description of the Applicant's post. She was also informed of the possibility of requesting a review of this decision by the Joint Staff Management Recourse Committee for General Service classification as provided in paragraph 3 of ITC/OED/INF/358.

On 9 April 1991, the Applicant requested further information from the Chief, PAS, in order to prepare her request for review of the classification decision. On 18 April 1991, the Applicant requested the Executive Director, ITC, to review the contested

decision. She asked that a Personnel Action be issued to implement retroactively, with effect from 1 January 1989, the initial decision of the Classification Committee to classify her post at the G-5 level. Furthermore, she stated that the job description she had been sent by the Chief, PAS, did not correspond to her actual duties, which were more numerous and important than the duties described therein.

On 4 June 1991, the Applicant wrote to the Executive Director, to the Chief, PAS, and to the Director, Division of Administration, asking when they would implement the decision to promote her to the G-5 level, which was supposed to have been effective from 1 January 1989. Discussions thereupon ensued between the Applicant and the Chief, PAS.

In a memorandum dated 1 August 1991, addressed to the Applicant, the Chief, PAS, pointed out that her post had been submitted to three different classification exercises: the first, in 1989, by a Classification Committee, which had recommended that her post be classified at the G-5 level; the second by Classification Consultants, and the final one by the second Classification Committee, which had recommended that her post be classified at the G-4 level. The Chief, PAS, explained that, on the basis of these three recommendations, the Executive Director, ITC, had approved the classification of the post at the G-4 level.

In a reply dated 16 August 1991, to the Executive Director, the Applicant stated that she had never been made aware of all the different steps in the process of classification of her post. The memorandum dated 8 December 1989, whereby she had been informed that her post had been reclassified to the G-5 level, referred to the results of the classification exercise, not merely to recommendations that would later require confirmation. Moreover, her expected promotion to the G-5 level had not been questioned until April 1991, with the consequence that she had not applied to vacant G-5 posts in reliance on her forthcoming promotion.

In a memorandum dated 14 October 1991, the Chief, PAS, informed the Applicant that no administrative measure could be taken before the Recourse Committee finished reviewing all the cases pending before it.

On 26 December 1991, the Applicant wrote to the Chief, PAS, and reiterated her request for retroactive implementation of her promotion to 1 January 1989.

On 30 January 1992, the Chief, PAS, informed the Applicant of the recommendation of the Recourse Committee to reject her appeal and of the subsequent decision of the Executive Director to accept this recommendation.

On 27 March 1992, the Applicant requested the Secretary-General to review two contested decisions, i.e. the non-implementation of the 1989 upgrading of her post to the G-5 level and the subsequent downgrading of the same post in 1992. Having received no reply within the specified time-limit, the Applicant lodged an appeal with the Geneva Joint Appeals Board (JAB) on 29 June 1992.

On 1 January 1993, the Applicant was promoted to the G-5 level, upon the recommendation of the UNCTAD/GATT Appointment and Promotion Board.

On 14 November 1994, the JAB unanimously adopted its report. Its conclusions and recommendations read, in part, as follows:

"40. The Panel concludes that while it cannot find evidence to support the Appellant's claim that the Administration has discriminated against her in the course of the reclassification exercise, the Administration has acted in a callous manner, and that the lack of due process has caused a moral prejudice to the Appellant.

In the light of the above, the Panel considered recommending that the Appellant be given two within-grade salary increments as a compensation for the moral prejudice she has suffered. However, the Panel noted that the Appellant has already reached step 11 of the G-5 level and that consequently this recommendation could not be applied.

Under the circumstances, the Panel recommends that the Appellant be compensated by an amount equivalent to two months of her current net base salary.

The Panel makes no further recommendation in support of this appeal."

On 29 November 1994, the Secretary-General transmitted to the Applicant a copy of the JAB report and informed her as follows:

"The Secretary-General has examined your case in the light of the Board's report. He has taken note of the Board's conclusion that it did not find evidence to support your claim that the Administration discriminated against you in the course of the reclassification exercise. He has also taken note of the Board's concerns over the handling of your case and its recommendation that you be given compensation.

The Secretary-General has decided to accept the recommendation of the Board that you be compensated an amount equivalent to two months of your current net base salary."

On 11 October 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The administrative decision to reclassify the Applicant's post to the G-4 level after it had been classified as a G-5 post was arbitrary and contradicted established procedures.
2. The decision to reclassify the Applicant's post back to the G-4 level was also discriminatory since all the other promotions given at the same time as the Applicant's were maintained.

Whereas the Respondent's principal contentions are:

1. The classification of the Applicant's post at the G-4 level was a proper exercise of administrative discretion and the Applicant's due process rights were not violated.
2. The decision to classify the post in question at the G-4 level was not vitiated by extraneous factors. The Applicant has not

discharged the onus placed upon her to establish prejudice or improper motive.

3. The Applicant would not have been entitled to an automatic promotion to the G-5 level, even if the post that she encumbered had been classified at a higher level.

4. The Applicant is not entitled to compensation in addition to what she has already received.

The Tribunal, having deliberated from 29 October to 21 November 1996, now pronounces the following judgement:

I. The issue before the Tribunal is whether the Administration's decision to classify the Applicant's post at the G-4 level and the manner in which that decision was communicated to the Applicant were vitiated by lack of due process and improper motives, in violation of her rights.

II. In order to properly evaluate this case, the way in which the Respondent's decision was reached must be reviewed. The reclassification of the Applicant's post was conducted within the framework of an overall review of post classifications in the Applicant's division. The motivation behind this reclassification was that, in the space of a few years, operations had trebled, whereas the number of staff remained almost the same, resulting in a considerable increase in the workload.

III. The Applicant was informed of the reclassification of her post in the following manner. On 8 December 1989, the Chief, PAS, informed the Applicant that the "final draft job description for the post occupied by you [has] been classified at the G-5 level." In a circular dated 20 March 1990, the Executive Director advised all General Service staff that the Classification Committee had already evaluated 77 out of 123 posts. He also announced that he had

employed a classification expert to "review ... the General Service study and for the preparation of proposals for the comprehensive implementation of job classification throughout ITC."

On 29 October 1990, the Executive Director further informed all General Service staff that the Classification Committee had completed its work and that, following his approval, the staff would be informed of the level of their posts.

On 22 March 1991, the Chief, Personnel Administration Section, informed the Applicant that the Executive Director had "determined that the grade of the post that you occupy is to be established at the G-4 level."

IV. It appears to the Tribunal that the methodology used by the Administration in the classification procedure lacked the basic elements of fairness and verged on the arbitrary.

According to ITC/OED/INF/358, dated 14 May 1990, the review announced by the Executive Secretary on 20 March 1990 through ITC/OED/INF/358, was to be conducted according to ITC/CIR/121 with the modifications included in ITC/OED/INF/358. The Tribunal had to determine whether these procedures were duly followed. To this end, the Tribunal requested the Respondent to inform it how such procedures were observed. The answer provided by the Respondent failed to address the points contained in the Tribunal's question.

As a consequence, the Tribunal lacks evidence that would show that the relevant procedures have been followed. However, the very scant evidence pointed towards the existence of departures from the established procedures. For instance, paragraph 2 (1) requires that the reclassification should be discussed with directors of divisions. According to the expressions of the Director of the Division of Technical Cooperation (DTC) on 22 April 1991 and of the Applicant's supervisors on 6 July 1993, the new review process was "finalized" without the approval of either the Chiefs of office or myself". The Tribunal concurs with the Director of DTC, who

strongly criticised this lack of consultation and who emphasized that the entire reclassification exercise lacked credibility.

Furthermore, the decision to downgrade the classification to the G-4 level did not take into account that for 16 months, that is, between 8 December 1989 and 22 March 1991, the Applicant relied on the classification that had been communicated to her in December 1989. In addition, the Classification Committee, in classifying the Applicant's post, proceeded to do so by analogy with other posts in the division without taking into account that her post had a particular specification which distinguished it from the other posts in the division. Lastly, it is not clear to the Tribunal why all the staff members whose posts were upgraded during the general classification were promoted, with the exception of the Applicant.

The Tribunal also notes that the inadequacy of the methodologies used in the classification process is further evidenced by the fact that it took four years to review just 123 posts.

V. The Respondent argues that the classification of the Applicant's post was proper and did not violate her due process rights. He points out that her post had been submitted to three different classification exercises which resulted in the recommendation that the Applicant's post be classified at the G-4 level. The Tribunal believes that this argument is flawed. At no time, during the 16 months following the confirmation of her classification at the G-5 level, was the Applicant personally informed that her post was being re-examined. She was never given the opportunity to respond to the classification recommendations. Furthermore, the Applicant, who believed that her classification at the G-5 level was confirmed, lost the opportunity to apply for vacant G-5 posts.

VI. It is clear to the Tribunal that it cannot substitute its judgement for that of the Respondent in job classification matters (Judgements No. 396, Waldegrave (1987) and No. 541, Ibarria (1991)). The role of the Tribunal is to determine whether, under the circumstances, the Respondent acted within his reasonable discretion. The Tribunal is of the view that the Administration did not use reasonable discretion.

VII. For the foregoing reasons,

(1) The Tribunal orders that the Applicant's case be remanded to the Classification Committee and that her post grading should be reconsidered. (Cf. Judgements No. 597, Colayco (1993) and No. 602, Calder (1993)). In accordance with article 9, paragraph 2 of the Tribunal's Statute, the Tribunal orders the Respondent to pay to the Applicant three months of her net base salary at the rate in effect at the time of her separation from service.

(2) In addition, because of the callous manner in which the Respondent handled the Applicant's case, the Tribunal orders the Respondent to pay the Applicant as compensation the amount of three months' net base salary at the rate in effect at the time of her separation from service.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mayer GABAY
Member

Deborah Taylor ASHFORD
Member

New York, 21 November 1996

R. Maria VICIEN-MILBURN
Executive Secretary